REMARKS

This is a full and timely response to the non-final Office Action mailed by the U.S. Patent and Trademark Office on October 5, 2007. Claims 1-7 remain pending in the present application. Claims 1, 2 and 6 are amended. Support for the amendments to claims 1, 2 and 6 can be found in the specification at least on page 6, lines 10-12 and page 7, lines 3-26. In view of the foregoing amendments and following remarks, reconsideration and allowance of the present application and claims are respectfully requested.

Drawings

The drawings are objected to. The Office Action alleges that figures 1 and 2 should be designated by the legend "prior art." Applicants have submitted herewith replacement drawing pages 1 and 2, including the legend "prior art" for figures 1 and 2.

Accordingly, Applicants respectfully request that the objection to the drawings be withdrawn.

Specification

Abstract

The abstract is objected to. The Office Action alleges that the abstract of the disclosure is less than 150 words in length and that the abstract should be in narrative form.

Applicants respectfully submit that there is no requirement that the abstract be 150 words in length. Applicants respectfully submit that MPEP § 608.01(b) states that the abstract may not exceed 150 words in length.

However, Applicants have amended the abstract as requested in the Office Action, and respectfully request that the objection be withdrawn.

Cross Reference to Related Application

Applicants have updated the reference to patent application no. 10/210,798 by adding a reference to U.S. Patent No. 7,111,204.

Rejections Under 35 U.S.C. § 102

Claims 1-7 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,799,213 to Zhao *et al.* (hereafter *Zhao*).

A proper rejection of a claim under 35 U.S.C. § 102 requires that a single prior art reference disclose each element of the claim. *See, e.g., W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983). Anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference. *See, e.g., In re Paulsen,* 30 F.3d 1475, 31 USPQ2d 1671 (Fed. Cir. 1994); *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990). Alternatively, anticipation requires that each and every element of the claimed invention be embodied in a single prior art device or practice. *See, e.g., Minnesota Min. & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.,* 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992). The test is the same for a process. Anticipation requires identity of the claimed process and a process of the prior art. The claimed process, including each step thereof, must have been described or embodied, either expressly or inherently, in a single reference. *See, e.g., Glaverbel S.A. v. Northlake Mkt'g & Supp., Inc.,* 45 F.3d 1550, 33 USPQ2d 1496 (Fed. Cir. 1995). Those elements must either be inherent or disclosed expressly. *See, e.g., Constant v. Advanced Micro-Devices, Inc.,* 848 F.2d 1560, 7 USPQ2d 1057 (Fed. Cir. 1988); *Verdegaal Bros., Inc. v. Union Oil Co.,* 814 F.2d 628, 2 USPQ2d 1051 (Fed. Cir. 1987). Those elements must also be arranged as in the claim. *See, e.g., Richardson v. Suzuki Motor Co.,* 868 F.2d 1226, 9 USPQ2d 1913 (Fed. Cir. 1989); *Carella v. Starlight Archery & Pro Line Co.*, 804 F.2d 135, 231 USPQ 644 (Fed. Cir. 1986). For anticipation, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *See, e.g., Scripps Clinic & Res. Found. v. Genentech, Inc.,* 927 F.2d 1565, 18 USPQ2d 1001 (Fed. Cir. 1991).

Accordingly, the single prior art reference must properly disclose, teach or suggest each element of the claimed invention.

Applicants have amended claim 1 to recite "an addressable named list means to enable the generation of substantially random and unique network transaction instances comprising multiple named lists, each list having at least one variable attribute simulative of real network traffic patterns, the substantially random and unique network transaction

instances generated by incrementing at least one uniquely variable transaction instance, each instance associated with a unique user class population." Applicants respectfully submit that at least these features are not disclosed, taught or suggested by *Zhao*.

Applicants have amended claim 2 to recite "means to enable the generation of substantially random and unique attributes to vary a population of synthetic user attributes, wherein the substantially random and unique attributes comprise multiple named lists, each list having at least one variable attribute." Applicants respectfully submit that at least this feature is not disclosed, taught or suggested by *Zhao*.

Applicants have amended claim 6 to recite "means for generating synthetic transaction instances, simulative of the network load presented by real users, in accordance with a test plan containing multiple population classes the synthetic transaction instances comprising multiple named lists, each list having at least one variable attribute." Applicants respectfully submit that at least this feature is not disclosed, taught or suggested by *Zhao*.

Zhao discloses a client server load testing system that generates a plurality of virtual clients or virtual users. *See Zhao*, Abstract. *Zhao* uses a message building agent that uses corresponding actions, where each action uses one or more sequential messages that operate in combination to provide a server transaction scenario for communications involving the virtual users. See *Zhao*, col. 2, lines 45-51.

In marked contrast to *Zhao*, independent claim 1 includes at least "an addressable named list means to enable the generation of substantially random and unique network transaction instances comprising multiple named lists, each list having at least one variable attribute simulative of real network traffic patterns, the substantially random and unique network transaction instances generated by incrementing at least one uniquely variable transaction instance, each instance associated with a unique user class population." Applicants respectfully submit that at least these features are not disclosed, taught or suggested by *Zhao*.

Applicants also respectfully submit that *Zhao* fails to disclose, teach or suggest at least "means to enable the generation of substantially random and unique attributes to vary a population of synthetic user attributes, wherein the substantially random and unique attributes comprise multiple named lists, each list having at least one variable attribute," as recited in independent claim 2.

Applicants also respectfully submit that *Zhao* fails to disclose, teach or suggest at least "means for generating synthetic transaction instances, simulative of the network load presented by real users, in accordance with a test plan containing multiple population classes the synthetic transaction instances comprising multiple named lists, each list having at least one variable attribute," as recited in independent claim 6.

Accordingly, Applicants respectfully submit that independent claims 1, 2 and 6 are allowable for at least the reason that they recite features that are neither disclosed, taught nor suggested by *Zhao*. Further, Applicant respectfully submits that dependent claims 4-5, which depend directly from allowable independent claim 1, claim 3, which depends directly from allowable claim 2, and claim 7, which depends directly from allowable independent claim 6 are allowable for at least the reason that they depend from allowable independent claims. *In re Fine,* 837 F.2d 1071, 5 USPQ 2d 1596, 1598 (Fed. Cir. 1998).

CONCLUSION

For at least the foregoing reasons, Applicants respectfully request that all outstanding rejections be withdrawn and that all pending claims of this application be allowed to issue. If the Examiner has any comments regarding Applicants' response or intends to dispose of this matter in a manner other than a notice of allowance, Applicants request that the Examiner telephone Applicants' undersigned attorney.

Respectfully submitted,

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